



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/462,656	01/14/2000	WALID N ABOUL-HOSN	9261.16761-PCTUS	5364

7590 02/17/2005

DANIEL D RYAN
RYAN KROMHOLZ & MANION
POST OFFICE BOX 26618
MILWAUKEE, WI 53226-0618

EXAMINER

SNOW, BRUCE EDWARD

ART UNIT	PAPER NUMBER
----------	--------------

3738

DATE MAILED: 02/17/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/462,656

Applicant(s)

ABOUL-HOSN, WALID N

Examiner

Bruce E Snow

Art Unit

3738

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 07 February 2005.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-5, 47 and 48 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-5, 47-48 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Response to Arguments/Amendments

Applicant's response dated 2/7/05 has been fully considered.

Applicant's submission of a new terminal disclaimer on 9/10/04 has been noted and has been forwarded to the appropriate personnel for review.

Regarding the rejection under 35 U.S.C. 102(b) as being anticipated by Rom et al (5,746,709), applicant states, "[t]here is no fluid communication between pump 40 and/or lumen 42 and inflation lumen 36." As claimed, the first passageway and second passageway do not have to be connected in fluid communication with each other. Giving the claim language its broadest reasonable interpretation, the "pump" is the entire device not just the rotor. It is clear that fluid is permitted to flow in the first passageway into the pump in a first direction (in inner walls 16) and a second passageway (between outer wall 34 and inner wall 16) permits fluid to flow output from the pump in the reverse direction.

Regarding the rejection under 35 U.S.C. 102(b) as being anticipated by Kolff et al, the Examiner's position is believed to be clearly stated in the grounds of rejection.

Applicant's amendment to the specification is approved.

Double Patenting

The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA

Art Unit: 3738

1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

All claims are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over all claims of U.S. Patent No. 6,083,260. Although the conflicting claims are not identical, they are not patentably distinct from each other because the current application is merely the subcombination of the pump comprising the same elements which is broader than the patented claims.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-5 and 47-48 are rejected under 35 U.S.C. 102(b) as being anticipated by Rom et al (5,746,709).

Referring to at least figure 3, Rom et al teaches a pump for transporting body fluids comprising:

a pump housing having an outer wall 34;

a rotor 44 positioned for rotation within the pump housing; and

Art Unit: 3738

inner walls 16 within the pump housing that surround at least a portion of the rotor defining an inner region forming a first passageway between the rotor and the inner walls and further defining an outer region forming a second passageway (in communication with 36) between the outer wall and the inner walls of the first passageway permitting fluid flow in a first direction and the second passageway permitting fluid flow in the reverse direction.

The rotor imparts both axial flow and centrifugal flow on fluid and is considered to be both a centrifugal pump and an axial flow pump. Further, applicant's recitation of centrifugal and axial does not add additional elements and only limits the preamble.

Claims 1-5 and 47-48 are rejected under 35 U.S.C. 102(b) as being anticipated by Kolff et al (5,282,849).

Referring to at least figure 2, Kolff et al teaches a pump for transporting body fluids comprising:

- a pump housing having an outer wall 28, 29;

- a rotor positioned for rotation within the pump housing; and

- inner walls 47 within the pump housing that surround at least a portion of the rotor defining an inner region forming a first passageway between the rotor and the inner walls and further defining an outer region forming a second passageway between the outer wall and the inner walls of the first passageway permitting fluid flow in a first direction and the second passageway permitting fluid flow in the reverse direction.

Art Unit: 3738


The rotor imparts both axial flow and centrifugal flow on fluid and is considered to be both a centrifugal pump and an axial flow pump. Further, applicant's recitation of centrifugal and axial does not add additional elements and only limits the preamble.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Bruce E Snow whose telephone number is (571) 272-4759. The examiner can normally be reached on Mon-Thurs.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Corrine McDermott can be reached on (571) 272-4754. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

bes



BRUCE SNOW
PRIMARY EXAMINER